

*The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance ("the Department") on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.*

## **Kentucky Department of Insurance**

### **Advisory Opinion 99-08**

#### **In re: Any Willing Provider Law**

**RELEVANT FACTS AND STATUTES:** Recently the Department has seen some issues regarding the application of the any willing provider law. The statutes involved are KRS 304.17A-005(17), 304.17A-005(18), 304.17A-005(22), 304.17A-270, and 304.17A-525.

**DEPARTMENT'S POSITION:** KRS 304.17A-270 contains the any willing provider law. The statute says:

A health insurer shall not discriminate against any provider who is located within the geographic coverage area of the health plan and is willing to meet the terms and conditions for participation established by the health insurer, including the Kentucky State Medicaid program and Medicaid partnerships.

The first step is to determine if the plan with which the provider seeks to contract is a health benefit plan [defined in KRS 304.17A-005(17)] offered by an insurer [defined in KRS 304.17A-005(22)]. If step one is satisfied, the second step is to determine if the provider seeking a contract with the health benefit plan is included in the definition of provider found in KRS 304.17A-005(18). Finally, if the first two steps are met and the provider is located in the geographic coverage area of the health benefit plan, the provider cannot be excluded if he/she is willing to meet the terms and conditions of contracting with the insurer.

KRS 304.17A-525 requires insurers to develop relevant, objective standards for initial consideration of providers and for providers to continue as a participating provider in the health benefit plan. It requires the terms and conditions to be based on relevant, objective standards.

The Department considers standards to be relevant and objective if the standards are uniformly applied to all providers within a given provider category (e.g., physicians) and based upon criteria that are reasonably related to the provider category for the provision of services. Examples include, but are not limited to, medical licensure, specialty board certification, medical malpractice history, valid DEA number, and hospital privileges.

The Department considers standards to not be relevant and objective if the standards are based upon criteria that are not reasonably related to the provision of services by that provider category. Examples include, but are not limited to, required membership in a certain professional organization, professional enhancements, a medical degree from a certain university, a certain age, race, gender, sexual orientation and disability. The Department considers limiting the number of providers in a provider category, based upon the determination that the insurer's network is adequate to be contrary to the law.

The Department will consider all circumstances in determining if standards are relevant and objective. The examples listed above are not an exclusive list. The Department may determine that a particular term and condition is not based on relevant and objective criteria, and in violation of the any willing provider law, based on a reason other than listed in this Advisory Opinion. This Opinion is intended to serve as a guide for plans in developing terms and conditions.

During the litigation in Health Maintenance Organization Association of Kentucky, Inc. et al. v. George Nichols III, Civil Action No. 97-24 the Department was precluded from enforcing the statute because the Court issued a stay on the enforcement of the law. However, the case was decided in the Department's favor in August of 1998 and the stay is no longer in effect. The Department is now enforcing the any willing provider law.

Any questions concerning this matter may be directed to Shaun T. Orme, Counsel for the Department at (502)564-6032.

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George Nichols III

Commissioner

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Date